IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24700 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHERALU NAGRIK SAHAKARI BANK LTD. - Petitioner(s)
Versus
OMKAR BODY BUILDERS & 6 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 7.
MR SS PANESAR for Respondent(s) : 1 - 5, 7,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 29/01/2007

ORAL JUDGMENT

1. This petition challenges order dated 10th November, 2006 made by the Gujarat State Co-operative Tribunal, Ahmedabad below application for stay in appeal No.795 of 2006. The following prayers are made by the petitioner.

> *10. In the premises, therefore, the petitioner, prays as beneath:-*
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> *(A) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, order or direction, quashing and setting aside the order dated 10th November, 2006, passed by the learned Members of the Gujarat State Co-operative Tribunal below application for stay in Appeal No.795 of 2006, a copy whereof figures at Annexure"E" to the petition; and further be pleased to allow the petitioner-bank to execute the judgment and award passed against the respondents in Lavad Case No.2612 of 2002;*
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> *(B) That pending admission, hearing and final disposal of this writ petition, this Hon'ble Court be pleased to stay the operation, implementation and effect of the order dated 10th*

November, 2006, passed by the learned Members of the Gujarat State Co-operative Tribunal below application for stay in Appeal No.795 of 2006, a copy whereof figures at Annexure"E" to the petition; and further be pleased to permit the petitioner to execute the judgment and award passed by the Registrar, Nominees Court, Ahmedabad, in Lavad Case No.2612 of 2002;

or in the alternative

(C) That pending admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to direct respondent No.1 to deposit the entire decretal amount with costs and interest in Lavad Case No.2612 of 2002 or any amount as this Hon'ble Court may think it just and proper, in the facts and circumstances of the case;

(D) That this Hon'ble Court be pleased to award the costs of this Special Civil Application to the petitioner herein;

And

(E) That this Hon'ble Court be pleased to pass such other further orders as the nature and circumstances of the case may demand.

2. The petitioner is a Co-operative Bank from whom respondent Nos. 1 and 2 availed of various financial facilities. As the said respondents failed to discharge their liabilities Lavad Suit No.2612 of 2002 came to be filed by the petitioner-Bank. On 19.09.2006, the suit was decreed in favour of the petitioner for a sum of Rs.97,73,985.60 along with interest at the rate of 22.50%. Against the said award and decree, the respondent Nos. 1 and 2 herein preferred appeal Nos.795 of 2006 and 798 of 2006 before the Tribunal. The appeals were accompanied by application for stay which came to be allowed vide impugned order dated 10.11.2006 staying the operation of the Judgment and Decree made by the Board of Nominees.

3. Heard Mr.P.K.Jani, learned advocate for the petitioner-Bank and Mr.S.S.Panesar appearing on behalf of respondent Nos.1 and 2. In light of the view that the Court is inclined to take, the matter has been heard finally. Rule. The learned advocate for the respondent is directed to waive service.

4. It is an admitted position between the parties that on 18.08.2006, respondent No.1 moved application Mark 216 whereunder the documents on which the petitioner-Bank was

placing reliance were requested to be forwarded to handwriting expert. A similar application Mark 217 came to be moved by respondent No.1 praying for summoning the Ex-Manager and Ex-Accountant cum Clerk of the petitioner-Bank for tendering their evidence. Vide application Mark 219 another application for obtaining a report from handwriting expert was also moved. According to the respondents, after the said applications were heard, the Board of Nominees posted the mater for making orders on the said applications on 06.09.2006. That the said date was adjourned to 14.09.2006. Finally, on 19.09.2006, while rejecting the three applications moved by the respondent, the Board of Nominees also delivered the Judgment in the Lavad Suit and hence, according to respondent, the Judgment was rendered ex-parte.

5. As can be seen from the impugned order made by the Tribunal it has come to the conclusion that on 19.09.2006, the Board of Nominees was only required to pass an order on three applications, namely, Exh.216, Exh.217 and Exh.219. But the Board of Nominees having delivered the Judgment in the Lavad Suit itself, the Tribunal has treated that the said Judgment has been delivered in haste and also affects the right of the respondents to challenge the interim order

rejecting three applications. Finally, the Tribunal has come to the conclusion that even if there were some transactions of doubtful nature stated to have been conducted by the Ex-Manager of the petitioner-Bank along with connivance of some other(s) member(s) of the petitioner-Bank which did not cause any prejudice to the respondents, yet because criminal proceedings were pending against the said persons the respondents were entitled to cross-examine the said persons. Therefore, according to the Tribunal, the balance of convenience tilted in favour of the respondents when compared with that of the petitioner-Bank. Therefore, vide impugned order, the Judgment and the Decree have been stayed till disposal of the pending appeals.

6. The Tribunal has failed to take into consideration that the Bank was in a possession of a decree in a money suit and in normal circumstances, operation of the said decree ought not to have been stayed without adequately protecting interest of the petitioner-Bank. The Tribunal has also while passing the impugned order continued the stay of operation against the properties possessed by the respondents. Thus leaving the petitioner-Bank virtually with a paper decree. Without entering into any discussion as to whether the

Tribunal could have, or could not have, stayed the operation of the decree in question, suffice it to state that even in exercise of its discretion, the Tribunal is expected to balance the competing interests and at the same time take into consideration the basic fact that the Bank is dealing with public funds. The impugned order of Tribunal fails to take into consideration the findings recorded by Board of Nominees that the Lavad Suit was at a stage wherein pleadings and leading of evidence was completed and the parties were to make submissions in support of their respective stands. The Board of Nominees has categorically found that the three applications moved by the respondents were part of dilatory tactics; that, even if, the transactions to which the respondents were adverting to could be treated to be of doubtful nature ultimately the said transactions did not have any effect on the loan transactions between the parties. Not only that, it has been found by the Board of Nominees that ultimately, in so far as the objection of respondents is concerned, there was no financial implication nor was any prejudice shown to have been caused to the respondents. As noticed hereinbefore even the Tribunal has accepted this as a fact.

7. In the aforesaid circumstances, without recording any findings as to why and how the said findings recorded by the Board of Nominees are incorrect in manner whatsoever the Tribunal ought not to have passed a blanket order in the manner that it did. The position in law is well settled that the Tribunal is expected to set out the facts and contentions in brief, the factors which are pro and con qua the respective stands, and thereafter record the findings supported by reasons, including reasons, howsoever brief, as to why the Tribunal does not agree with the order of the lower forum from whose judgment and order the appeals have been preferred. The impugned order of the Tribunal does not in any manner reflect this exercise on part of the Tribunal except for reproducing the contentions and enumerating a catena of decisions. The impugned order does not record any error committed by the Board of Nominees. Even if the Tribunal was of the opinion that the Board of Nominees had committed an error in delivering the final judgment, the Tribunal ought to have appreciated that it is always advisable in such matters to pass a consolidated order on such interlocutory applications as well as the main suit so as to avoid a spate of litigations emanating from each interlocutory order. The modality adopted by the Board of Nominees, in the circumstances, does

not appear to be, prima-facie, incorrect. However, if the Tribunal feels that there was lack of opportunity at any stage, the Tribunal ought to have specifically recorded its findings to the said effect after hearing both the sides before it.

8. In light of what is stated hereinbefore, the impugned order dated 10.11.2006 cannot be sustained and is hereby quashed and set aside. The applications for stay moved by the respondents before the Tribunal in pending appeals stand restored to file of the Tribunal. The Tribunal shall dispose of the same in accordance with law after hearing both the sides. Needless to state that if either side moves the Tribunal for expeditious disposal of the application for stay, the Tribunal shall do the needful in the matter in accordance with law.

9. The petition is allowed accordingly. Rule discharged. There shall be no order as to costs.

(D.A.MEHTA, J.)

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